

**DEPARTMENT OF STATE REVENUE  
REVENUE RULING IT 96-03  
JANUARY 7, 1997**

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**ISSUE**

Adjusted Gross Income Tax - Deriving Adjusted Gross Income From Indiana Sources

Authority: IC 63-2-2, Rule 45 IAC 3.1-1-38, Section 101(a) of Public Law 86-272, 73 Stat. 555 (1959), 15 U.S.C. Section 381

The taxpayer requests the Department to rule on whether or not the taxpayer has done business in/derived adjusted gross income from Indiana sources.

**STATEMENT OF FACTS**

The taxpayer, an S corporation, established a printing plant in Louisville, Kentucky in April of 1992. In February 1996 the taxpayer sold the plant to a local publishing company. The taxpayer printed newspapers, with the majority of its customers in Kentucky; however, the taxpayer did have work in the plant from several national customers who also do business with other plants of the taxpayer in other states. The remaining, perhaps, ten percent of the business in the plant came from several surrounding states, including some from Indiana. Most sales were consummated after extensive negotiations, usually, over the phone from Boulder, Colorado, the headquarters of the taxpayer and where the sales department is located. Once or twice a year the taxpayer did have a salesperson in Indiana (no overnight stays) with no orders ever being taken due to the nature of the taxpayer's business. Most of taxpayer's customers were small publications. Many of them picked up their papers at the plant to avoid a delivery charge. However, the taxpayer did deliver some of its customers' papers to their place of business, both by company owned vehicles and common carrier, and in a few cases the customers were located in Indiana. The taxpayer has no locations, inventory, etc. in Indiana.

The taxpayer has ten printing plants in Colorado, New Mexico, Arizona and Mississippi. With the sale of the Louisville, Kentucky plant the taxpayer believes that it has no remaining Indiana customers. All of the taxpayer's stockholders filed Kentucky income tax returns which accounted for 100% of business done in the Louisville plant.

**DISCUSSION**

Pursuant to IC 6-3-2-2, "adjusted gross income derived from sources within Indiana" is defined to include:

- (1) income from real or tangible personal property in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under IC 6-3-2-2.2.

Rule 45 IAC 3.1-1-38, interpreting IC 63-2-2, provides that for apportionment purposes, a taxpayer is "doing business" in Indiana if it operates a business enterprise or activity in Indiana including, but not limited to:

- (1) Maintenance of an office or other place of business in Indiana;
- (2) Maintenance of an inventory of merchandise or material for sale, distribution, or manufacture, or consigned goods;
- (3) Sale or distribution of merchandise to customers in Indiana directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution;
- (4) Rendering services to customers in Indiana;
- (5) Ownership, rental or operation of a business or of property (real or personal) in Indiana;
- (6) Acceptance of orders in Indiana; and
- (7) Any other act in Indiana which exceeds the mere solicitation of orders so as to give the state nexus under P.L. 86-272 to tax its net income.

Here, the taxpayer's delivery of newspapers by company owned vehicles to its Indiana customers in conjunction with its salesperson's visits to Indiana falls within the ambit of IC 63-2-2 and Rule 45 IAC 3.1-1-38, thereby, exceeding the mere solicitation of orders giving Indiana nexus under P.L. 86-272. The taxpayer's shareholders, therefore, are required to report their share of income (loss), as adjusted, from the taxpayer which is derived from or attributed to sources within Indiana as determined by use of the apportionment formula described in IC 6-3-2-2 on

the taxpayer's income.

#### **RULING**

The Department rules that the taxpayer has met the statutory definition of doing business in/deriving adjusted gross income from Indiana sources, hence, has exceeded the mere solicitation of orders so as to give Indiana nexus under P.L. 86-272. The taxpayer's shareholders are, therefore, required to report their share of income (loss), as adjusted, from the taxpayer which is derived from sources within Indiana.

#### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns or making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE